IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

Con.Case(C).No. 563 of 2007(S)

AGAINST THE ORDER IN I.A.NO.13071/2004 IN OP.34179/2002 Dated 13/10/2004

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PETITIONER/4TH RESPONDENT IN OP:

E.ABUSSALAM,
AGED 33 YEARS,
S/O.IBRAHIM,
LOWER DIVISION CLERK, MUNICIPAL OFFICE.
THALASSERY, KANNUR DISTRICT.

BY ADV. SRI.C.S.ABDUL SAMMAD
SRI.V.D.BALAKRISHNA KARTHA

RESPONDENT/2ND RESPONDENT IN O.P:

SRI.V.K.PRATHAPACHANDRAN,
(NAME OF FATHER AND AGE NOT KNOWN TO THE PETITIONER),
SECRETARY-IN-CHARGE,
CALICUT DEVELOPMENT AUTHORITY,
KOZHIKODE.

BY ADV. SRI.V.M.KURIAN

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

Cont. Case (C) No.563 of 2007

Dated, this the 11th day of December, 2007

JUDGMENT

H.L.Dattu, C.J.

Complainant in this petition filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, alleges that the respondent has disobeyed the interim order passed by this Court in I.A.No.13071 of 2004 in O.P.No.34179 of 2002 dated 13th October, 2004.

2. The interim order passed by this Court is as under:

> "Learned counsel for the petitioner submits that there are six vacancies of Assistant Grade II in Calicut Development Authority. In case there are six posts of Assistant Grade II in Calicut Development Authority, there will be a direction to the first respondent to regularise the service of the petitioner as Assistant Grade II from the date of joining duty in Calicut Development Authority and grant the consequential benefits till he was absorbed as Lower Division Clerk in the Municipal Common Service by order dated 16.9.2004."

3. Aggrieved by the said order passed, the respondent had filed a review petition in No.882 of 2004. The learned Single Judge had rejected the review petition by his order dated 2nd September, 2005. The order so passed by the learned Judge is as under:

> "I do not find any ground to review the interim order dated 13.10.2004. The direction in the order is only to take steps in case there are vacancies as observed in the interim order. In case the review petitioner seeks any further direction the same can be considered only in a separate

petition or at the time of disposal of the original petition. In that view of the matter, I do not find any merit in the review petition. It is dismissed."

4. Aggrieved by the interim order and the review order passed by the learned Single Judge, the respondent had filed writ appeal before this Court in No.1301 of 2006. A Bench of this Court by its order dated 7th August, 2006 has dismissed the writ appeal. It is only thereafter that the petitioner in the writ petition has filed the present contempt petition, inter alia, requesting us to initiate appropriate proceedings against the respondent for his alleged wilful and deliberate disobedience of the orders and directions issued by this Court.

5. Section 2(b) of the Contempt of Courts Act defines the meaning and expression 'civil contempt'. It means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

6. While entertaining this contempt petition, this court had issued notice to the respondent. The respondent has entered appearance through his learned counsel. He has also filed a detailed counter affidavit before this Court. In that, apart from justifying their inaction in implementing the orders passed by this Court, they further state that the respondent authority has now wound up by the State Government and it has been made part of the Development Wing of the Calicut Corporation.

7. The complainant, may be realising the non-existence of the respondent authority, has already filed an appropriate application before the Government of Kerala seeking remedies. The said application is pending consideration.

8. Since the respondent organization is no more in existence, it may not be possible to hold that the respondent has wilfully, deliberately, purposely and wantonly disobeyed the orders and directions issued by this Court. Since we have come to the conclusion that there is no wilful disobedience of the orders passed by this Court, the question of taking cognizance of this complaint would not arise.

9. Accordingly we reject this contempt petition. However, liberty is reserved to the petitioner to pursue the application filed by him before the State Government.

10. In view of the order passed in this contempt petition, the relief sought for in I.A.No.599 of 2007 need not be considered by us. Accordingly the said application is closed.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

vns